



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Counseling, Department of Health Professions
VAC Chapter Number:	18 VAC 115-40-10 et seq.
Regulation Title:	Regulations Governing the Certification of Rehabilitation Providers
Action Title:	Periodic Review
Date:	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This chapter sets forth the education, experience and examination requirements for certified rehabilitation providers, establishes fees to cover the administrative costs of the licensing and disciplinary activities, and sets forth standards of conduct which provide the basis for disciplinary action in the event of practitioner misconduct.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.

§ 54.1-2400. General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day*

period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

§54.1-3505 authorizes the Board to administer the certification of rehabilitation providers

§ 54.1-3505. Specific powers and duties of the Board. *In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:*

1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.

2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.

3. To designate specialties within the profession.

4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.

5. (Effective until July 1, 1999) To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to § 54.1-3610. The provisions of this subdivision shall expire on July 1, 1999.

6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.

7. To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors.

§ 54.1-3510 defines “certified rehabilitation provider” and sets forth a scope of practice for the profession.”

§ 54.1-3510. Definitions. *As used in this article, unless the context requires a different meaning:*

"Advisory Board" means the Advisory Board on Rehabilitation Providers.

"Certified rehabilitation provider" means a person who is certified by the Board as possessing the training, the skills and the experience as a rehabilitation provider to form an opinion by discerning and evaluating, thereby allowing for a sound and reasonable determination or recommendation as to the appropriate employment for a rehabilitation client and who may provide vocational rehabilitation services under subdivision A 3 of § 65.2-603 that involve the exercise of professional judgment.

"Professional judgment" includes consideration of the client's level of disability, functional limitations and capabilities; consideration of client aptitudes, vocational skills and abilities; education and pre-injury employment; and identification of return-to-work options and service needs which culminate in the determination or recommendation of appropriate employment for the rehabilitation client.

§ 54.1-3513 restricts the title “rehabilitation provider” to individuals who hold the certification, or who hold certain categories of licensure.

§ 54.1-3513. Restriction of practice; use of titles

A. No person, other than a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work, shall hold himself out as a provider of rehabilitation services or use the title "rehabilitation provider" or a similar title or any abbreviation thereof unless he holds a valid certificate under this article.

B. This section shall not apply to employees or independent contractors of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, provided such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603.

§ 65.2-603 requires that individuals providing vocational rehabilitation services to Virginia workers’ compensation claimants be certified or hold a certain type of license.

§ 65.2-603. Duty to furnish medical attention, etc. and vocational rehabilitation; effect of refusal of employee to accept.

A. 1. As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician chosen by the injured employee from a panel of at least three physicians selected by the employer and such other necessary medical attention. Where such accident results in the amputation or loss of use of an arm, hand, leg, or foot or the enucleation of an eye or the loss of any natural teeth or loss of hearing, the employer shall furnish prosthetic or orthotic appliances, as well as wheelchairs, walkers, canes, or crutches, proper fitting and maintenance thereof, and training in the use thereof, as the nature of the injury may require. In awards entered for incapacity for work, under this title, upon determination by the treating physician and the Commission that the same is medically necessary, the Commission may require that the employer furnish and maintain bedside lifts, adjustable beds, and modification of the employee's principal home consisting of ramps, handrails, or any appliances prescribed by the treating physician and doorway alterations, provided that the aggregate cost of all such items and modifications required to be furnished on account of any one accident shall not exceed \$25,000. The employee shall accept the attending physician, unless otherwise ordered by the Commission, and in addition, such surgical and hospital service and supplies as may be deemed necessary by the attending physician or the Commission.

2. The employer shall repair, if repairable, or replace dentures, artificial limbs, or other prosthetic or orthotic devices damaged in an accident otherwise compensable under workers' compensation, and furnish proper fitting thereof.

3. The employer shall also furnish or cause to be furnished, at the direction of the Commission, reasonable and necessary vocational rehabilitation services; however, the employer shall not be required to furnish, or cause to be furnished, services under this subdivision to any injured employee not eligible for lawful employment. Vocational rehabilitation services may include vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education, and retraining. Those vocational rehabilitation services that involve the exercise of professional judgment as defined in § 54.1-3510 shall be provided by a certified rehabilitation provider as provided in Article 2 (§ 54.1-3510 et seq.) of Chapter 35 of Title 54.1 or by a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work. In the event a dispute arises, any party may request a hearing and seek the approval of the Commission for the proposed services. Such services shall take into account the employee's preinjury job and wage classifications; his age, aptitude, and level of education; the likelihood of success in the new vocation; and the relative costs and benefits to be derived from such services.

B. The unjustified refusal of the employee to accept such medical service or vocational rehabilitation services when provided by the employer shall bar the employee from further compensation until such refusal ceases and no compensation shall at any time be paid for the period of suspension unless, in the opinion of the Commission, the circumstances justified the refusal. In any such case the Commission may order a change in the medical or hospital service or vocational rehabilitation services.

C. If in an emergency or on account of the employer's failure to provide the medical care during the period herein specified, or for other good reasons, a physician other than provided by the employer is called to treat the injured employee, during such period, the reasonable cost of such service shall be paid by the employer if ordered so to do by the Commission.

D. As used in this section and in § 65.2-604, the terms "medical attention," "medical service," "medical care," and "medical report" shall be deemed to include chiropractic service or treatment and, where appropriate, a chiropractic treatment report.

E. Whenever an employer furnishes an employee the names of three physicians pursuant to this section, and the employer also assumes all or part of the cost of providing health care coverage for the employee as a self-insured or under a group health insurance policy, health services plan or health care plan, upon the request of an employee, the employer shall also inform the employee whether each physician named is eligible to receive payment under the employee's health care coverage provided by the employer.

F. If the injured employee has an injury which may be treated within the scope of practice for a chiropractor, then the employer or insurer may include chiropractors on the panel provided the injured employee.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the Board's intent to review all chapters of its regulations governing licensing and certification was posted on the Virginia Regulatory Town Hall, published in the Registrar of Regulations on August 15, 2000, and mailed to individuals who requested listing on the public participation mailing list. No comment was received regarding the Board's intent to amend this chapter.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

Goal: To establish adequate education, experience and examination requirements to ensure the competency of practitioners and protect the public.

Effectiveness: The Board is satisfied that its education, experience and examination requirements are adequate to ensure minimum competency. The Board would like to include a time-limit for sitting for the examination after approval by the Board, to ensure that all applicants are meeting the same standards for certification. The Board would also like to include a requirement for individuals who fail the examination twice to document 20 hours of additional education or training in the areas of deficiency.

The Board has also discussed the need for continuing competency requirements. Over the past year, the General Assembly has enacted legislation to mandate the Boards of Psychology and Social Work to develop continuing education requirements for their licensees. The Board would like to include the issue of continuing competency requirements for certified rehabilitation providers if a statutory mandate is established by the 2001 General Assembly.

Goal: To establish consistent and effective standards of ethics to provide a basis for disciplinary action of unscrupulous practitioners.

Effectiveness: The Board has concerns about the degree of inconsistency in the standards of practice among its regulations. Because many practitioners hold more than one license or certification, it is important for the Board to promulgate consistent bases for disciplinary action across all categories of licensure and certification.

Goal: To establish fees sufficient to cover the expenses of operating the licensing and disciplinary programs.

Effectiveness: Fee changes became effective April, 2000 to offset a projected budget deficit and conform the fee structure to Principles for Fee Development applied to all Boards in the Department of Health Professions. While the spending of the Board is within the projected revenues, the deficit carried forward from the '98-'00 biennium will result in a projected deficit for the current biennium of approximately \$256,997. The Department will continue to monitor revenue and expenditures and revisit the financial position of the Board in 2002.

Clarity:

Although the Board considers the regulations generally clear and easy to understand, it has identified several areas where unnecessary or outdated language needs to be omitted or updated, and several areas where new language is needed for clarification or improved consistency with its other regulations

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Over the past five years, the Board has promulgated three new chapters for the licensure of marriage and family therapists and substance abuse treatment practitioners and the certification of rehabilitation providers. The Board has also completed extensive reviews of its long-existing regulations for professional counselor licensure and substance abuse counselor certification. Although the Board attempted to mirror established regulations in the development of the new regulations, the regulatory processes were progressing along different timelines, and improvements identified during one review might not meet the initial purpose of another review. To address the inconsistencies among its regulations, the Board has compared all of its chapters section by section and identified areas of that could be made uniform. This will be a definite advantage to individuals who are working toward more than one category of licensure or certification at the same time, and to the licensees who are supervising more than one type of licensure candidate. It will also be beneficial to improve consistency in the standards of practice to provide consistent bases for disciplinary action across all categories of licensure.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

Where language is generic among regulations, such as definitions of terms, instructions for application, supervision, renewal and reinstatement, and rules for taking and repeating the examinations, the Board recommends amending the regulation to make the language consistent with its other chapters.

The regulations currently include a provision for certification without examination for individuals who hold a national certification in the profession. However, it is not clear to individuals who obtained a national certification without examination that they have not met substantially equivalent requirements. The Board recommends adding a new section

outlining more clear instructions for licensure by endorsement. The criteria for endorsement would not change.

To provide more fair and consistent bases for disciplinary action, especially in the areas of dual relationships and confidentiality the Board recommends amending the standards of practice and grounds for disciplinary action to conform with its other regulations.

Substance

Please detail any changes that would be implemented.

18 VAC 115-40-10. The Board recommends 1) adding a definition for the word “applicant;” 2) Changing the word “training” to “didactic experience” to and the word “experience” to “work experience” in an attempt to clarify the difference between the two. 3) changing the term “regionally accredited” to regional accrediting agency” which is the term used in the regulations. 4) Striking the word supervisor, which is described adequately under the definition of “supervision.”

18 VAC 115-40-22. The Board recommends striking the provision for examination waiver in subsection C and replacing it with a new section on certification by endorsement.

18 VAC 115-40-25. Minor phrasing and formatting changes are recommended to conform this section with comparable sections in the Board’s regulations for other licensure titles.

18 VAC 115-40-25.1 A new section is recommended to more clearly set forth the requirements for certification by endorsement.

18 VAC 115-40-26. Minor changes are recommended to make this section consistent with the Board’s other chapters. This will not change the required content.

18 VAC 115-40-27. Minor changes are recommended to make this section consistent with the Board’s other chapters. This will not change the required content.

18 VAC 115-40-28. The Board recommends adding a time limit of 2 years for applicants to sit for the examination after Board approval. Other minor phrasing and formatting changes are recommended to conform this section with other chapters.

18 VAC 115-40-29. The Board recommends a new section with a requirement for 20 clock hours of additional education or training in the areas of deficiency for individuals who fail the examination twice, as set forth in other licensure and certification regulations.

18 VAC 115-40-30. The Board recommends moving the requirement to notify the Board of an address change into this section ,and adding a requirement to notify the Board of a legal name change. Other minor phrasing and formatting changes are recommended to conform this section with other chapters.

18 VAC 115-40-38. This section would be repealed if the Board moves the change of address notification requirement to section 30.

18 VAC 115-40-40. The Board recommends amending the standards of practice so that the chapters for its three licensure contain the same standards.

18 VAC 115-40-50. The Board recommends this section to mirror the comparable sections in its other chapters.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will not have any significant effect on the ease or difficulty of obtaining a license or certificate, and will have no influence on the authority and rights of parents in the education, nurturing or supervision of their children, will not impact self-pride or self-sufficiency of licensees, and will not affect the marital commitment or family income.